MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

UIP2612 – INTELLECTUAL PROPERTY LAW

(All Sections / Groups)

13 OCT 2016
Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 4 Questions only.

3. Attempt ALL questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of:
   i. Copyright Act 1987 (Act 332);
   ii Patents Act 1983 (Act 291);
   iii Industrial Designs Act 1996 (Act 552);
   iv Trade Marks Act 1976 (Act 175)

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

XY Sdn Bhd is a manufacturer of carbonated drinks and generally beverages containers. The company introduced a series of can coolers under the registered trademark 'Can Cool' since January 2000. The mark was in the shape of a bottle with ice cubes at its background. The brand 'Can Cool' soon became so well-known in Malaysia, in fact; 'Can Cool' became a synonym for can coolers. This was despite the fact that the company was well known for its distribution of other products such as refrigerators, washing machines and other general products it was the brand 'Can Cool' that had an impact on the consumers. Consumers associated XY Sdn Bhd basically with 'Can Cool' beverage containers. Lately, can coolers with looks and get-up similar to 'Can Cool' products were found to be available and sold at the daily night markets. The daily night market coolers were labelled with a mark which closely resembled that of 'Can Cool' except the words in the mark were 'Can Kool'. XY Sdn Bhd eventually traced and successfully identified CD Sdn Bhd as the manufacturer of the daily night market coolers.

(i) When sued by XY Sdn Bhd for trademark infringement, CD Sdn Bhd claimed that the trademark 'Can Cool' cannot be registered for reasons not revealed to XY Sdn Bhd. Discuss with reference to relevant statutory provisions under Trade Marks Act 1976 and relevant case law whether there is any legal basis in the contention put forwarded by CD Sdn Bhd.

(15 marks)

(ii) Assuming CD Sdn Bhd succeeds in the argument as mentioned in (i), advise XY Sdn Bhd as to any other remedy available.

(5 marks)

(iii) Discuss also whether CD Sdn Bhd could rely on section 40 of the Trade Marks Act 1976.

(5 marks)

(Total: 25 marks)

Continued...

QUESTION 2

"The information, to be confidential, must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely it must not be something which is public property and public knowledge..."

As per Lord Greene M.R. in *Saltman Engineering Co Ltd* v. *Campbell Engineering Co Ltd* (1948) 65 RPC 203.

Discuss.

(Total: 25 marks)

QUESTION 3

(a) Describe in detail the two characteristics of information as a public good.

(10 marks)

(b) Explain how free-riding can lead to a market failure involving the production of new creative works such as books and music.

(7 marks)

(c) Explain the role of copyright in resolving the above market failure problem.

(8 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Tom is an amateur photographer who wants to take up photography as a career. In the day time, he works as a photographer for an online news portal and is usually instructed to accompany a report to sites when the reporter is making an interview or filming a feature item.
On weekends he supplements his income by working as a contract photographer for events such as wedding. On top of that, he also builds up a collection of miscellaneous photographs to be 'sold' on stock photography websites.

Advise Tom on the following:

(a) Whether and how he can 'register' his copyright and prove that he is the copyright owner of his photographs?

(10 marks)

(b) Whether he is the copyright owner for the photographs he has taken when working for the online news portal?

(10 marks)

(c) What arrangement he should be seeking with stock photography websites if he wishes to 'sell' his photographs online?

(5 marks)

(Total: 25 marks)

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